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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: 

DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Athil Stephan Shaba DHS File No. A73 005 148)
Plaintiff,)
vs.)
Paul Pierre, District Director,)
U.S. Citizenship and Immigration Services,)
Michael Chertoff, U.S. Secretary of Homeland Security)
)
and)
Michael Mukasey, U.S. Attorney General,)
Defendants.)

Civil No:

'08 CV 0343 JM BLM

**COMPLAINT FOR RELIEF IN THE
NATURE OF MANDAMUS**

Plaintiff, by his attorney, complaining of Defendants alleges as follows:

1. Plaintiff Athil Stephan Shaba is a native and citizen of Iraq, and has been a lawful permanent resident of the United States since September 27, 1999. Plaintiff resides within the jurisdiction of this Court.

2. The Defendant Paul Pierre is the Director of the U.S. Citizenship and Immigration Services (CIS), a subsidiary agency of the U.S. Department of Homeland Security (DHS), in San Diego, California. This Defendant is sued herein in his official capacity. He is responsible for the processing of applications for naturalization for applicants who reside within San Diego County, State of California, under 8 USC 1421, 1443, 1446, et. seq., and 8 CFR 310, et. seq.

3. Michael Mukasey is the U.S. Attorney General, an agency of the United States Government, in Washington, D.C. This Defendant is sued herein in his official capacity. He is

1 responsible for the processing of security clearance checks conducted by the Federal Bureau of
2 Investigation (FBI), which the CIS maintains must be completed before it can approve any
3 application for naturalization, under 8 USC 1421, 1443, 1446, et. seq., and 8 CFR 310, et. seq.

4 4. Michael Chertoff is the Secretary of Homeland Security, an agency of the U.S.
5 Government, in Washington, D.C. This Defendant is sued herein in his official capacity. He is
6 responsible for overseeing the operations of the CIS, pursuant to 8 USC 1421, 1443, 1446, et. seq.,
7 and 8 CFR 310, et. seq.

8
9 5. The Court has jurisdiction of this action pursuant to 28 USC 1331, 28 USC 1361, 28
10 USC 1651, 5 USC 701, et. seq., and 28 USC 2201, et. seq.

11 6. On March 31, 2006, Mr. Shaba filed with the CIS California Service Center an
12 application for naturalization. The CIS assigned to him application no. WSC*001483051 to his
13 naturalization case.

14
15 7. On May 9, 2006, Mr. Shaba provided his biometric fingerprints to the CIS at a
16 scheduled appointment. Counsel believes that the FBI fingerprint results show that the Plaintiff has
17 not been arrested or convicted of any crime anywhere in the world during the five years prior to the
18 application filing. Plaintiff, through counsel, further asserts that Plaintiff has not been arrested or
19 convicted of any crime from the application filing date to the present.

20
21 8. Although nearly 23 months have passed since Plaintiff filed his naturalization
22 application with the government, the CIS has failed to schedule him for an examination on that
23 application. On October 23, 2006, the Plaintiff called the CIS by telephone to inquire of the status
24 of his naturalization case. The CIS mailed to the Plaintiff a transmittal sheet dated October 26,
25 2007, advising that the processing of the Plaintiff's naturalization case had been delayed because
26 the government's investigation background check on the Plaintiff remained open. In February 2007
27 and again in May 2007, the Plaintiff physically appeared before the CIS at its Chula Vista Customer
28

1 Service Center (CVCSC), now the Chula Vista District Office, to inquire of the status of his
2 application. On each occasion, a CIS representative told the Plaintiff that he would be scheduled
3 for a naturalization examination only *after* the referenced background check had been completed. ,
4 On March 6, 2007, the Plaintiff asked the U.S. Congressman Duncan Hunter, 52nd District from El
5 Cajon, California, to take an interest in the Plaintiff's naturalization case. On March 14, 2007,
6 Congressman Hunter's office inquired of the CIS by email correspondence the status of the
7 naturalization case. On that same day, the CIS responded by email correspondence that the FBI
8 background name check remained pending. On November 8, 2007, counsel spoke by telephone
9 with a representative from Congressman Hunter's office. That representative advised that her
10 office had received no further status reports on the Plaintiff's case from the CIS. Further, she
11 stated, based on the circumstances, the Congressman's office could do nothing to effect any results
12 in this matter.
13

14
15 9. Nearly 23 months after he filed his application for naturalization with the
16 government, the CIS has failed to schedule the Plaintiff for the requisite examination on his
17 application. The government refuses to schedule the examination until the FBI completes its
18 security clearance name checks.

19
20 10. Defendant Pierre has been unable or unwilling to schedule Plaintiff's referenced
21 naturalization examination. Further, his office has failed to meaningfully disclose (1) whether the
22 name checks have been completed; (2) the reason or reasons why such name checks have not yet
23 been completed; (3) when such name checks will be completed; or (4) the results of the name
24 checks, if they have been completed. Further, the Defendants are taking no action on Plaintiff's
25 application even though similar cases have been completed far more expeditiously.

26
27 11. Plaintiff has exhausted all available administrative remedies.
28

12. The Defendants' refusal to act in this case is, as a matter of law, arbitrary, and not in accordance with the law.

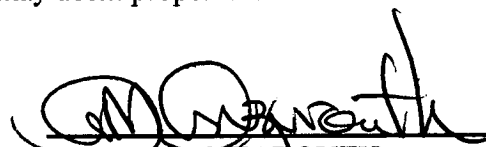
13. Plaintiff has been greatly damaged by the failure of the each Defendant to act in accord with his respective duties under the law.

14. The Defendants, in violation of the Administrative Procedures Act, 5 USC 701, et seq., have unlawfully withheld or unreasonably delayed action with Plaintiff's application and have failed to carry out the adjudicative and administrative functions delegated to them by law and regulation with regard to Plaintiff's case.

WHEREFORE, Plaintiff prays that this Honorable Court:

- A. Order the Defendants to have their agents process this case to a conclusion;
- B. Order that the Defendants pay reasonable attorney fees; and
- C. Order other and further relief as it may deem proper under the circumstances.

DATED: February 21, 2008


ALAN M. ANZAROUTH
Attorney for Plaintiff

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Athil Stephan Shaba

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Alan M. Anzarouth, 3111 Camino del Rio N., Suite 1325
San Diego, CA 92108 619-398-9390

DEFENDANTS

Paul Pierre, Director, U.S. Citizenship and Immigration Services,
Michael Chertoff, U.S. Secretary of Homeland Security, and
County of Residence of First Listed Defendant San Diego

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known) 08 CV 0343 JM BLM
U.S. Attorney, 940 Front Street, San Diego, CA 92101

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 PTF ☐ 1 DEF ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 PTF ☐ 4 DEF
- Citizen of Another State ☐ 2 PTF ☐ 2 DEF ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 PTF ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 PTF ☐ 3 DEF ☐ 3 Foreign Nation ☐ 6 PTF ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity.)
 8 USC Sections 1421, 1443, 1446, 1446, et. seq.; 28 USC Sections 1331, 1361, 1651, 2201, et. seq.; 5 USC 701

Brief description of cause:
 CIS has failed to schedule Plaintiff's naturalization examination nearly 23 months after application filing

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/21/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

147946

AMOUNT

\$250

APPLYING IFP

JUDGE

MAG. JUDGE

81 2/21/08

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

147946 - SH

February 21, 2008
16:30:13

Civ Fil Non-Pris

USAO #: 08CV0343

Judge.: JEFFREY T MILLER

Amount.:

\$350.00 CA

Total-> \$350.00

FROM: SHABA V. PIERRE